

Supreme Court, U. S.  
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# In the Supreme Court

OF THE

United States

OCTOBER TERM, 1976

No. 76-804

GEORGE R. CAESAR, M.D.

*Petitioner,*

VS.

LOUIS P. MOUNTANOS,

as Sheriff of the County of Marin,

State of California, et al.

*Respondents.*

CALIFORNIA STATE PSYCHOLOGICAL ASSOCIATION

BRIEF AMICUS CURIAE

IN SUPPORT OF THE POSITION OF PETITIONER

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**CALIFORNIA STATE PSYCHOLOGICAL ASSOCIATION**

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**IN SUPPORT OF THE POSITION OF PETITIONER**

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CALIFORNIA STATE PSYCHOLOGICAL ASSOCIATION (hereinafter called the "Association") respectfully submits a brief *amicus curiae* in the instant case in support of petitioner's request for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, as provided for in Rule 42 of the Rules of this Court. The written consent of counsel for peti-

tioner and counsel for the only respondent who appeared below has been obtained.

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#### **INTEREST OF THE ASSOCIATION**

The Association is a professional organization of psychologists in the State of California, and is part of the American Psychological Association. Approximately 1,100 of its 2,500 members are licensed under the laws of the State of California to engage in the practice of psychology. The Association is the largest organization representing licensed psychologists in California.

The practice of psychology by licensed psychologists under California law (Business and Professions Code, Sec. 2903) includes psychotherapy. "Psychotherapist," to whom the psychotherapist-patient evidentiary privilege applies, is defined in the California Evidence Code (Sec. 1010) as including licensed psychologists as well as psychiatrists. The subject matter of the instant case, a psychotherapist's privilege to refuse to testify about his patient, therefore deeply concerns licensed psychologists who practice psychotherapy in California.

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#### **REASON FOR FILING A BRIEF AMICUS CURIAE**

The Association is concerned that the Court recognize that the issue here presented is not the narrow complaint of one solitary practitioner. The total con-

fidentiality sought by the petitioner is vital to all psychotherapists, whether they be psychiatrists or licensed psychologists. The Association and its members desire the opportunity to present to the Court its views on the importance to all psychotherapists of the privilege sought by the petitioner. Interpretation of the California Evidence Code so as to deny the privilege to the psychotherapist will affect not only the personal liberty of the petitioner but will have a serious deleterious effect on the practice of psychology.

Licensed psychologists, for whom the Association speaks, stand in the same position as petitioner in respect to the psychotherapist's evidentiary privilege. They, too, face the danger of contempt proceedings for refusing to testify if they adhere to the standards of total confidentiality necessary to the psychotherapeutic process.

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#### **PSYCHOTHERAPY REQUIRES THAT THE EVIDENTIARY PRIVILEGE NOT TO TESTIFY HAVE NO EXCEPTIONS**

In order effectively to practice psychotherapy, the psychotherapist must be able to assure his patient that, with no exceptions, the inner secret thoughts and ideas revealed by the patient to the psychotherapist will be confidential. The psychotherapist must urge his patient to reveal, with no reservations, the content of his thoughts as a necessary essence of psychotherapeutic technique.

Without the assurances of confidentiality, the flow of inner thoughts and material will dry up and the practice of psychotherapy will not be possible. Section 1016 of California Evidence Code denies the privilege of confidentiality to a psychotherapist if his patient has put in issue his mental and emotional condition. This law, if applied, requires that the psychotherapist warn his patient about a potential exception to the confidentiality to which he would otherwise adhere. The very raising of the issue in the context of the psychotherapeutic relationship would deny to the psychotherapist access to the material necessary to treat his patient.

For the reasons set forth in petitioner's brief, California Evidence Code, Section 1016, as applied, violates the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States. The attempted resolution of the conflicting interests in presenting full information to the Court and preserving the confidentiality of the patient-psychotherapist relationship in *In Re Lifschutz* (2 Cal.3d 415, 85 Cal.Rptr. 829, 44 A.L.R.3d 1) has not succeeded. Psychologists, as psychotherapists, stand in fear that the practice of their healing art, using necessary and accepted techniques, will put them in jeopardy of confinement if, under this section of the Evidence Code, in violation of the Constitution of the United States, they are required to reveal their patient's confidential communications.

# CONCLUSION

For the reasons set forth above, the Association prays that the Court grant to petitioner the relief requested.

Dated, San Francisco, California,  
December 10, 1976.

Respectfully submitted,

IRWIN LEFF,

*Attorney for California State  
Psychological Association,  
Amicus Curiae.*